Frito Lay, Inc. *and* Edward Delaney and International Brotherhood of Teamsters, Local 58, AFL–CIO. Case 36–RD–1595

March 31 , 2004

DECISION ON REVIEW AND CERTIFICATION OF RESULTS OF ELECTION

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On April 19, 2002, the Regional Director for Region 19 issued a Supplemental Decision and Order Setting Aside Election (pertinent portions of which are attached as an appendix) in which he set aside the decertification election held on January 17, 2002.[1] The Regional Director adopted the hearing officer's recommendation to sustain the Union's Objections 2 and 3, alleging that the election must be set aside based on (1) the Employer's use of "ride-alongs" to communicate with the unit employees prior to the election and (2) Operations Director Alex Rembert's question to a union steward regarding whether he would quit if the Union were decertified.[2] Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Employer filed a timely request for review and request for stay of election. By Order dated May 15, 2002, the Board granted the Employer's request for review but did not stay the election.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

We have carefully considered the entire record in this case, including the parties' briefs on review, and, contrary to the Regional Director, overrule the Union's objections.

As explained below, we find that the Employer's use of "ride-alongs" was not coercive. We also find that Rembert's question was not coercive and, in any event, could not have changed the outcome of the election in light of the tally of votes. Accordingly, we conclude that the Employer's conduct did not interfere with employee free choice and therefore does not warrant setting aside the first election.

I. FACTS

The Employer manufactures packaged foods in its Vancouver, Washington facility and distributes its product throughout the northwest. Truckdriver Edward Delaney filed a petition on November 26, 2001, seeking decertification of Local 58 as the collective-bargaining representative of the Employer's 61 Vancouver-based over-the-road truckdrivers.

In the 2 months between the filing of the petition and the election, the Employer wanted to provide an opportunity for the employees to obtain information relevant to the drivers' upcoming voting decision. Because the Employer's ability to communicate with its drivers at the facility was constrained,[3] the Employer sent "guests"[4] along on their runs to provide information and answer any questions the drivers might have. These "ride-alongs" averaged approximately 10–12 hours, due to the length of the drivers' day runs,[5] and each truckdriver averaged approximately 3 ride-alongs in the 2 months before the election.[6]

The ride-along scheduling was informal. If a driver had asked for a specific ride-along guest or had asked questions within the expertise of a particular person, the Employer scheduled the ride-alongs accordingly. For those drivers who had not expressed particular areas of concern or requested a particular guest, the Employer scheduled ride-alongs based upon the route schedules and availability. When drivers objected to having ride-alongs, their requests were honored without being questioned.

On ride-alongs with nonunion truckdrivers, the drivers discussed what it was like to work at Frito Lay's nonunion facilities. At least one nonunion driver expressed his personal distaste for some of the practices in Vancouver and told the Vancouver driver that if such practices had been in place at his facility, he would address those is-

[1] The tally of ballots showed 29 votes cast for and 32 votes cast against union representation, with no challenged ballots.

[2] The Regional Director overruled all of the Union's remaining objections, pursuant to the hearing officer's recommendation. No party filed a request for review of the Regional Director's decision with regard to the overruled objections.

[3] The collective-bargaining agreement limited the number of meetings the Employer could hold at the facility. Furthermore, the drivers spend most of their time on the road; they spend only about half an hour at the Vancouver facility before and after their runs, during which they are busy preparing to go out on the road or finishing paperwork so they can go home.

[4] During the election campaign, there were two basic kinds of ride-along guests: (1) truckdrivers from nonunion Frito Lay facilities and (2) company managers and supervisors.

[5] The Employer did not schedule ride-alongs on runs that were expected to require layovers, which are significantly longer than day runs.

[6] It is customary for supervisors or other Vancouver personnel to ride along with truckdrivers to familiarize themselves with the routes or for a variety of other purposes. For example, Human Resource Manager Kendra Dodd had approximately 10 ride-alongs prior to the campaign, in order to address human resource issues and get to know the drivers. Distribution Manager Kevin Sargeant had approximately 9 ride-alongs when he arrived at the facility, in order to get to know the drivers.

sues directly with management and have them changed. Another nonunion driver mentioned that he liked his pension plan, which is different from the plan covering the Vancouver drivers. However, most of the conversations between the Vancouver drivers and their nonunion passengers consisted of general socializing unrelated to the election.

Similarly, on ride-alongs with management representatives, the conversations remained largely on topics unrelated to the election, such as their respective families or pasts. Management representatives did little to initiate discussion of the election or the Union beyond asking if the drivers had any questions.[7]

The Union admits that the ride-alongs were free of objectionable statements, except for the ride-along of Operations Director Alex Rembert with union steward McConnell. At one point during the ride-along, Rembert stated that he had been "blindsided" by a pension lawsuit filed the previous year against the Employer. The suit, which was filed by an employee, named McConnell as one of the employees having an interest in the lawsuit. At another point in the conversation, Rembert asked McConnell if he would quit his employment if the Union were decertified. McConnell responded that retirement was an option, but he would make that decision if and when the time came. They did not discuss the issue further.

II. ANALYSIS

The Regional Director sustained two of the Union's objections, setting aside the election based on (1) the Employer's use of "ride-alongs" to communicate with employees during the campaign and (2) Rembert's question to union steward McConnell inquiring whether he would quit if the Union was decertified.

In analyzing the ride-alongs, the Regional Director looked to a variety of factors considered by the Board in related contexts, such as "seat-of-power" interviews and employer home visits.[8] Based on the circumstances as a whole, including the duration of the ride-alongs, the high-level management positions of some of the ride-along guests, and the increased frequency of ride-alongs, the Regional Director found that the ride-alongs were an oppressive and unfair tactic that tainted the legitimacy of the election.

The Regional Director also found Rembert's question regarding whether McConnell would quit if the Union were decertified to be objectionable interrogation under the circumstances, including Rembert's position as a top manager, the fact that the conversation took place during a 10-to-12-hour long ride-along, and comments made by Rembert during the same ride-along that he felt "blindsided" by a pension-related lawsuit that McConnell and other employees had brought against the Employer.

The Employer asserts that its use of ride-alongs was not objectionable under prior Board precedent, e.g., *Noah's New York Bagels, Inc.*, 324 NLRB 266 (1997). The Employer also asserts that the question posed to union steward McConnell was not coercive, and, in any event, could not have affected the outcome of the election. We agree with the Employer on both issues.

A. The Ride-Alongs

The use of ride-alongs to communicate with over-the-road truckdrivers is not, in itself, coercive. See *Noah's New York Bagels*, 324 NLRB at 275; *Emery Worldwide*, 309 NLRB 185 (1992). The trucks are employer property and the drivers' main worksite. An employer may choose to campaign by accompanying employees on their routes if it prefers not to interfere with its truckdrivers' work schedules or to require the employees to remain after work for meetings. See *Noah's New York Bagels*, 324 NLRB at 275–276.[9] In *Noah's New York Bagels*, the Board found lawful an employer's ride-alongs with drivers during the preelection period for the purpose of communicating the employer's position on union representation to the drivers.

An employer's use of ride-alongs to communicate with its employees during an election campaign is only objectionable if, under all of the circumstances, the use of ride-alongs interferes with the employees' right to freely choose a bargaining representative. See *General Shoe Corp.*, 77 NLRB 124 (1948), enfd. *NLRB v. General Shoe Corp.*, 192 F.2d 504 (6th Cir. 1951); *F.N. Calderwood*, 124 NLRB 1211 (1959). In deciding whether an employer's use of ride-alongs amounts to objectionable conduct, relevant factors include: (1) whether the use and conduct of ride-alongs is reasonably tailored to meet the employer's need to communicate with its employees in light of the availability and effectiveness of alternate means of communication; (2) the atmosphere prevalent

[7] The Employer had trained its management representative as to what would constitute improper threats, interrogation, promises, and surveillance and instructed them to refrain from such conduct during ride-alongs and in all their dealings with the truckdrivers.

[8] For instance, *NVF Co.*, 210 NLRB 663 (1974) (seat-of-power); *Flex Products, Inc.*, 280 NLRB 1117 (1986) (same); *F.N. Calderwood*, 124 NLRB 1211 (1959) (home visits).

[9] Furthermore, contrary to the Regional Director's view, the Board did not find ride-alongs to be "per se objectionable" in *Mrs. Baird's Bakeries, Inc.*, 114 NLRB 444 (1955). In that case, the Board held that the dual tactic of interviewing employees in their homes and on their routes to urge them to reject the union was objectionable. See 114 NLRB at 445–446. The Board did not consider whether ride-alongs alone would be objectionable.

during the ride-alongs and the tenor of the conversation between the drivers and the employer's representatives; (3) whether the employer effectively permitted the employees to decline ride-alongs; (4) the frequency of the ride-alongs, both during and prior to the election campaign; (5) the positions held by the ride-along guests; (6) whether the ride-alongs were scheduled in a discriminatory manner; and (7) whether the ride-alongs took place in a context otherwise free of objectionable conduct. See generally *Noah's New York Bagels*, 324 NLRB at 275; *Emery Worldwide*, 309 NLRB at 186–187; *Rossmore House*, 269 NLRB 1176, 1177–1178 (1984), affd. *Hotel Employees & Restaurant Employees, Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985).

Applying these factors in the instant case, we find that Frito Lay's use of ride-alongs was not coercive. The Employer had a limited opportunity to meet with the drivers on company time, and the ride-alongs permitted relaxed meetings on company time, without interfering with the drivers' work schedules. The tenor of the conversations during the ride-alongs was casual, amicable, and nonthreatening, and there was no pressure from management to discuss the election. Indeed, most of the conversation during the trips did not concern the election. The drivers were free to decline ride-alongs, and they were not questioned about any such declination. There was no pressure placed on the drivers to accept ride-alongs. Ride-alongs were not uncommon before the election campaign, and the Employer did not schedule excessive pre-election ride-alongs for each driver. Further, many of the ride-along guests were fellow drivers from other facilities. Finally, the ride-alongs were not used in a discriminatory manner,[10] and took place in the context of a campaign free from coercive or objectionable conduct.[11]

Although the Regional Director emphasized the length of the ride-alongs, there is no indication that the Employer intentionally made the ride-alongs unnecessarily burdensome and unpleasant for the truckdrivers. Rather, the length of the trips was dictated by the length of the drivers' routes; shorter ride-alongs were infeasible. Furthermore, the majority of each ride-along was spent in social conversation; the driver and guest did not spend much of their time discussing the election. Under the circumstances, we find that the length of the ride-alongs was not coercive.

In addition, we do not agree that the instant case represents a "seat of power" situation. See fn. 8, supra. The meetings here were held in the employee's workplace, not in the office of a manager or high official. Moreover, we note that, even in the "seat of power" cases cited by the Regional Director, the Board found that the conduct was not objectionable.

For all these reasons, we find that the Employer's use of ride-alongs did not constitute objectionable conduct, and we overrule the Union's objection.

Our concurring colleague concedes that, applying all of the relevant factors under *Noah's New York Bagels*, the Employer's campaign period ride-alongs were not coercive. She nonetheless posits that the Board should revisit *Noah's New York Bagels* and consider whether there should be a bright line rule prohibiting all employer ride-alongs for campaign purposes during the critical period. We disagree. Apart from the fact that no party seeks to overrule *Noah's New York Bagels*, there is no suggestion that the principles of that case have given rise to confusion or have been difficult to administer. Finally, we believe that the multifactor approach of *Noah's New York Bagels* represents a careful balance between employee rights and managerial prerogatives.

B. The Rembert/McConnell Conversation

The Regional Director found that Rembert's question asking McConnell whether he would quit if the Union lost the election was objectionable, in light of Rembert's comment about the pension lawsuit and the circumstances as a whole. We disagree.

McConnell is a known union supporter and the tenor of the question was not coercive or threatening. The conversation was amicable and casual, and the subject of the Union was dropped after the single question was asked. Rembert's comment about the lawsuit was similarly amicable and occurred at a time different from the question. There is no evidence that the Employer was seeking to take adverse action against McConnell. Furthermore, the Union does not allege, nor is there any evidence of, any history of Employer discrimination or hostility towards union supporters, and the comments were made in a context free of unfair labor practices. Therefore, Rembert's isolated question and comment to McConnell were not objectionable coercion or interrogation. See *Bon Appetit Management Co.*, 334 NLRB 1042 (2001); see also *Emery Worldwide*, 309 NLRB 185 (1992); *Rossmore House*, 269 NLRB 1176 (1984), affd. *Hotel Employees & Restaurant Employees, Local 11 v. NLRB*, supra.

In any event, even if Rembert's question to McConnell were objectionable, there is no evidence that any other

[10] Although Union Steward McConnell had 7 ride-alongs—more than any other employee—we find that he was not singled out for special pressure. After the ride-alongs began and McConnell noticed he had not yet been scheduled for any, he specifically requested ride-alongs from management, and he never objected to any of his scheduled ride-alongs.

[11] As discussed below, we do not agree with the Regional Director that Rembert's comments to McConnell constituted coercive interrogation.

truckdrivers were aware of the exchange before the election. Therefore, because the Union lost the election by more than one vote, Rembert's question could not have affected the outcome of the election.

III. CONCLUSION

As neither the Employer's use of ride-alongs nor Operations Director Alex Rembert's question to union steward McConnell constituted objectionable conduct, we find that the Regional Director erred in setting aside the election conducted on January 17, 2002, and ordering a new election. The Regional Director's Supplemental Decision and Order is reversed, and the second election set aside. We hereby overrule the Union's objections, and we shall certify the results of the first election.

CERTIFICATION OF RESULTS OF ELECTION

IT IS CERTIFIED that a majority of the valid ballots has not been cast for the International Brotherhood of Teamsters, Local 58, AFL–CIO, and that it is not the exclusive representative of the employees in the unit involved herein within the meaning of Section 9(a) of the National Labor Relations Act, as amended.

Dated, Washington, D.C. March 31, 2004

Robert J. Battista, Chairman

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER LIEBMAN, concurring.

Because the result here seems compelled by the Board's decision in *Noah's New York Bagels*, 324 NLRB 266 (1997), I reluctantly concur. There is no basis for setting aside the election in this case unless "ride-alongs"—in which employer officials accompany employee-drivers in order to campaign against the union—are deemed inherently objectionable. But the Board instead looks to the specific circumstances, applying several factors to gauge the tendency of particular ride-alongs to interfere with employee free choice. We should reconsider that approach. As this case illustrates, there are good reasons to adopt a bright-line rule prohibiting campaign-related ride-alongs altogether.

Here, the ride-alongs averaged 10–12 hours, and there is no dispute that they were instituted for campaign-related purposes. In my view, what words actually passed between managers and drivers and how much of the drive actually was spent in election-related conversation are less important than the reasonable tendency of the arrangement itself to put inappropriate pressure on individual employees.

A ride-along demonstrates the employer's authority over drivers. It places drivers in very close confinement with a superior, sometimes for very long periods—indeed for an entire workday. This arrangement, moreover, is a departure from the normally solitary nature of the drivers' work. During a ride-along, drivers have no real option except to listen to their supervisor's message. At the same time, an ordinary driver, knowing full well the purpose of the ride-along, will feel pressure to engage in election-related conversation with the supervisor. Human beings are social creatures, and it would be socially awkward, at best, to sit in stony silence during the ride. The ride-along, in short, is an intrusion into the driver's private sphere. It will likely inhibit some drivers from supporting the union at all and inhibit others from engaging in open union activity that might become the topic for a ride-along conversation—even if supervisors say or do nothing that violates the Act.

I am not persuaded that there are good reasons to permit employers to use a campaign tool with such a strong potential for subtle coercion. It is no answer to observe that, at least here, drivers may opt out of the ride-along. A driver susceptible to intimidation—who should be our object of special concern—is unlikely to object to a ride-along. (Doing so, of course, tends to reveal the driver's union sentiments.) Nor is it likely that a ride-along will be justified because an employer lacks other means of communicating with drivers. Employers control the work schedules of their employees. They can lawfully compel employees to listen to their campaign message in a variety of less troubling ways—e.g., individual conversations before or after drivers begin their trips. And they obviously have any number of legal ways to reach drivers outside the confines of the truck cab.

To imagine a ride-along, from the driver's perspective, is to appreciate the tension with the established notion of achieving "laboratory conditions" for Board elections. Under our current approach to ride-alongs, some cases of objectionable conduct concededly will be detected and addressed. But other cases will go unremedied, because the Board's approach misses the subtle ways that ride-alongs can improperly inhibit employees, not merely persuade them. The Board accordingly should take a closer look.

Dated, Washington, D.C. March 31, 2004

Wilma B. Liebman, Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX

SUPPLEMENTAL DECISION AND ORDER SETTING ASIDE ELECTION

The election in this case was conducted on January 17, 2002, and the Union filed timely objections to the election. A hearing officer conducted a hearing on the objections on February 25 through 28, 2002, and issued her Report on Objections and recommendations on March 29, 2002, in which she made findings of fact, conclusions of law, and recommended that Objections 2 and 3 be sustained and the election be set aside and a second election be conducted. The hearing officer recommended that Objections 1, 4, 5, 9, and 10 be overruled. The hearing officer further recommended that the withdrawal of Objection 6 be approved, and noted that Objections 7, 8, and portions of Objection 9 had been withdrawn prior to the hearing.

Introduction

In the election conducted herein, the incumbent Union 1ost by a vote of 32–29, with no challenges, and filed objections. The hearing officer overruled all objections filed by the Union, except for findings that the Employer's "ride-along" campaign tactic, and one statement made to a unit employee during one of those trips, were objectionable.

No exceptions to the hearing officer's report were filed by the Union or the RD Petitioner.[1]

The Employer filed exceptions to the two partial objections the hearing officer found to have merit, I have reviewed those exceptions, and have decided to overrule them, arid to set aside the election.

The Employer's exceptions do not challenge the hearing officer's factual findings in any significant way. Rather, they challenge her legal conclusions drawn from those facts.

I will not repeat the facts here, which are set out in detail in the hearing officer's report. In a nutshell, the Employer utilized, as part of its campaign in favor of decertification, a "ride-along" program. The unit employees drive semi-trailers over-the-road to distribution facilities and back. The trips take an average of 10–12 hours. Their basic task is driving their trucks; they do not perform any merchandising. The Employer selected various local supervisors, managers, and HR positions, as well as supervisors and managers from other plants around the country, and unrepresented drivers from these other locations, to ride along, one-on-one, with the drivers on several of their trips during the campaign. The purpose of the ride-along was for the rider to be available to answer questions the driver might have about the campaign, including what it was like working at a nonunion facility. Most drivers had three ride-alongs during the campaign, some fewer, some more; one had seven such trips.

There is no evidence that any violation of Section 8(a)(1) of the Act took place during these rides, with one exception discussed below. The Union contended that the Employer utilized a campaign of excess and overkill, including an unending barrage of ride alongs, campaign literature, and presence of numerous Employer agents in the facility, especially the driver's room. The hearing officer discounted any conduct save the ride-alongs (and one interrogation). She found that the ride-along program was objectionable conduct, even though it did not violate the Act.

Ride-Along Cases

The only ride-along campaign case the parties have cited is *Noah's New York Bagels, Inc.*, 324 NLRB *266* (1997). The hearing officer found that *Noah's* did not involve the issue of whether the conduct was objectionable, only whether it was an unfair labor practice. (There were several pieces of 8(a)(1) conduct that took place during various ride-along trips in Noah's which were found violative, and therefore objectionable.) She then considered several cases involving small-group meetings at the locus of authority during a campaign, in particular *NVF Co.*, 210 NLRB 663 (1974), and applied the test in that case to the ride-alongs.

The Employer *asserts* that Noah's is precisely on point and that the facts are nearly identical; accordingly, dismissal of the objections is warranted. I agree with the hearing officer, as more fully set forth below.

Noah's is the closest case. However, Noah's answered only the question of whether that ride-along program was unlawful, not whether it was objectionable. It must be conceded that the adopted ALJD does not make the answer perfectly clear, one way or the other. However, I take administrative notice of the Report on Objections in *Noah's.* (Copy attached.) That report makes it indisputably clear that the ride-along issue was not an Objections issue. Thus, the case is not particularly helpful in assessing whether the tactic in this case is objectionable.

In *Mrs. Baird's Bakeries, Inc*., 114 NLRB 444 (1955), the Board found interviews by "top management personnel" in employee homes, in company offices, and on routes, to be per se objectionable. Such conduct interfered with employee free choice, even though it was not unlawful. The decision is quite conclusory in nature, but does seem to indicate that each of the three cited tactics was deemed objectionable.

There are two other cases that involved ride-alongs in an objections context. In *Advance Waste*, 306 NLRB 1020 (1992), the record Shows but one instance, not a unit-wide program of ride-alongs. In that case, the interrogation itself was unlawful, and therefore per so objectionable. In *Emery* Worldwide, 309 NLRB 186 (1993), again there was only one incident, not a wide campaign, of ride-alongs. The case was apparently tried on the issue of whether a statement made during the ride-along violated Section 8 (a)(1), and accordingly was objectionable. The statement was found not to be violative.

Given the lack of cases dealing with rlde-alongs as an objectionable campaign tactic, we must therefore look to analogies in related contexts for guidance. The Board has established at least three contexts where campaign conduct that is not itself violative may nevertheless be objectionable: seat-of-power interviews, home visits, and the Peerless PIywood rule.

Seat of Power Cases

The Board has long had a rule regarding the propriety of seat-of-power interviews. In such cases, the basic setup is small

[1] The Union timely filed a memorandum in opposition to the Employer's Exceptions.

groups of employees, interviewed by a manager, at the locus of power (e.g., the manager's private office). Originally such meetings were per se objectionable.

In *NVF Co.*, 210 NLRB 663 (1974), the Board stated first that the Board's "responsibility is to establish standards of the conduct of elections. Where the standards drop too low, the Board will set aside an election even though the conduct does not constitute an unfair labor practice." Id. at 664. The Board said it would continue to adhere to that principle, but "only where it can be said on reasonable grounds that, because of the small size of the groups interviewed, the locus of the interview, the position of the interviewer in the employers hierarchy, and the tenor of the speaker's remarks, we are not justified in assuming that the election results represented the employees' true wishes." Ibid. (Emphasis supplied.) The Board would weigh all of the facts and not use a per se approach.

In *NVF* the Board found no objectionable conduct, considering all of the circumstances. The employees were not called in singly, but in groups of five or six. Almost all employees were interviewed. In view of the "size of the groups" and the total interviewed, there was not reason to believe that the "individual employee considered that he was singled out" by the Employer for special attention and thus for special pressure. Although the interviews took place in the general manager's office, the employees were used to discussions with their boss in his office. There was no place else to hold the discussions, and the tone of the discussions was both noncoercive arid temperate. Under this set of circumstances, the conduct was not objectionable.

In *Flex Products, Inc.*, 280 NLRB 1117 (1986), 3/4 of the 164 employees were called in the plant manager's office, one by one, over the course of 10 hours (less than 4 minutes each on average, assuming no interruptions and seamless switch from one employee to the next). The conduct was not objectionable. While the meetings were one-on-one, there was "no evidence the employees were being singled out for special pressure, the factor which was of concern in *NVF*." Each employee was told he was called in because some people were just too shy to approach the boss directly. The employees knew that "virtually every employee" was being interviewed. The employees were accustomed to meeting with the boss in that room, and he was familiar to them because he regularly made the rounds of the plant and chatted with employees. The tenor of the meeting was noncoercive and temperate in tone.

Home Visits

Regarding employee home visits, the Board has held such conduct to be per se objectionable. In *General Shoe Corp.*, 77 NLRB 124 (1948), among other conduct considered and found objectionable (including seat-of-power interviews), the employer instructed its foremen to propagandize employees in their homes. This was found to be per se objectionable. In *F.N. Calderwood*, 124 NLRB 1211 (1959), 7–8 employees out of 37 were visited by a boss in their individual homes. The Board found that it was unnecessary to resolve whether the visitations were coercive, because the "technique alone" of visiting employees at home is objectionable. In *NVF*, supra, the Board rejected the per se rule found in *General Shoe* and *Peoples Drug Stores, Inc.*, 119 NLRB 634 (1957), regarding seat-of-power interviews, but said nothing about overruling the home visits rule.

I have located no case of systematic employer home visits after *Calderwood.* There have been many cases where employers have attempted a goose/gander argument to extend the employer home visit rule to union home visits of employees. The Board has always rejected this argument, without rejecting or questioning the underlying premise that union home visits should also be objectionable.

[The *Peerless Plywood* rule forbids massed assemblages of employees on company time during the 24 hours prior to the start of an election, coercive or not. *Peerless Plywood Co.*, 107 NLRB 427 (1954). I call attention to this case only as an example of speech/conduct that the Board finds per se objectionable, a forbidden tactic. The rationale is that the timing of such speeches creates a mass psychology which can override other media and arguments and create an unfair advantage. The conduct is simply viewed as unfair and overall impairing of a fain election.]

Application of Factors From Analogous Lines of Cases

I will now consider these factors that the Board has considered in somewhat related circumstances.

The following are factors favoring the Employer's position:

- The Employers conduct (with one exception discussed below) was temperate and non-coercive in content
- The cab of the truck is not a locus at Employer authority, nor is it "home."
- Some employees were told that participation in the ride-alongs was voluntary.
- The Employer had limited opportunity to hold captive audience meetings because of limitations it had agreed to in the collective-bargaining agreement
- The drivers spent relatively little time in the facility, so it was not as easy to reach them as it would be for someone in the facility all day.
- Some of the riders were the employees' own first-line supervisors.
- Riders were not an unknown event to the drivers in the ordinary course of business.

The following are factors favoring the Union's position:

- The riders were often high—sometimes the highest—managers.
- Many of the riders were strangers from other plants around the country.
- The truck cab—ordinarily the drivers' sanctuary on the road—becomes more like a locus of authority when one is "trapped" in it with a high-level boss, alone, for extended periods, with no method of "escape."
- Only a minority of employees was ever told participation was not mandatory, and then only after many, many rides had already been held.

- Employees had to request not to have a rider, rather than asking for one sua sponte. Asking *not* to participate tends to identify one as a union supporter, just as does rejection of a proffered employer T-shirt or button.
- One cannot opt out of a ride once one hits the road. The driver is "stuck" with the rider.
- The Employer could have "spent" one of its "budget" meetings to hold a group campaign meeting.
- The Employer could have met one-on-one in the breakroom or a low-level office. There is no showing individual meetings were restricted by the contract.
- The facility had omni-present Employer agent representatives whom any driver could talk to in an instant, any day, any time. Drivers were present in the facility at the start and end of every run, and the campaign representatives hung out in the driver room.
- Rides of this frequency–three minimum in a short period–were totally unknown to the drivers, except perhaps in a training context for new drivers.
- Rides by the higher managers were extremely uncommon. They did not routinely cruise with the drivers, or hang out in the driver room.
- The rides were extraordinarily lengthy, generally on the order of 10–12 hours each.
- The ride-alongs were one-on-one, not in small groups. (Obviously, there was limited room in the cab, but the point is the drivers were otherwise alone; intensity of the exposure to the Employer campaigners was not mitigated by the presence of comrades.)
- The steward was singled out for special pressure. He was the only driver who had seven rides, consecutively, whereas most had about three, interspersed. There were others who had more than three rides. The record does not reflect why some got this special attention, while others didn't. Surely it was riot oversight, since a spreadsheet was carefully maintained of each driver and ride-along.
- The sole purpose of the rides was to campaign. These were not routine rides in which the topic of union just happened to be raised.

In addition, I note that particularly in a one-on-one context there is an inherent pressure to talk with the rider about the subject at hand. The driver knew the rider was picked and dispatched with him for a specific purpose—to campaign, not to gather driving tips. There is inherent pressure to comply in this circumstances; it's a boss in the next seat, not a hitchhiker. Moreover, one cannot ignore the inherent social pressure to talk in the situation. To sit mutely is bound to be noticed and interpreted as a sign of resistance, a pro-union slant. Silence is easily seen by the driver as likely to be interpreted by the boss as indifference to the Employer's intended message. Asking the rider to "shut up" about the topic, or not to ride along, has the tendency to identify one's views, just as declining to accept an employer T-shirt or hat from one's supervisor does.

In my view the Board should treat the ride-along tactic in the same manner as it does the locus of authority tactic: evaluate all of the circumstances, but keep in mind life's realities as well. Applying all of the aforementioned considerations, I conclude that the balance in this context clearly points to an unfair tactic, an oppressive tactic that forces one to question the legitimacy of the results. I note in particular the closeness of the vote. If only two votes were tainted by this conduct, the election would have gone the other way. Accordingly, I sustain the Union's objection.

Robert/McConnell Conversation

There remains for consideration the alleged objectionable conduct pertaining to driver McConnell, who rode with Operations Director Alex Robert. The hearing officer found the facts. The Employer has offered no basis to overturn her credibility findings, and I will not.

During the ride, Rembert asked McConnell if he would quit if the Union lost the election. McConnell dodged the question by saying he would have to wait and see what happened. The driver was not sure if the unexpected question was a genuine, albeit unwanted, question, or perhaps even a suggestion that he ought to consider leaving. Then, Rembert added some comment about having been "bIind-sided" by a suit one of McConnell's comrades bad brought against the Employer. Perhaps Rembert did not recall that McConnell was a beneficiary of that suit as well, but that fact was not lost on McConnell.

This conversation took place one-on-one, in a circumstance where the driver was trapped for hours on end in the cab of his truck, on one of his seven trips, this time with the "Big Kahuna" himself. Rembert was the highest boss in the chain of command. He and the driver were not fishing buddies. McConnell was a steward, and therefore presumably pro-Union to some degree, but he and Rembert had participated in only one grievance meeting ever. Obviously Rembert was not the individual he went to for routine grievance matters, nor was Rembert one, so far as the record shows, to hang out in the drivers' room under ordinary circumstances, seeking to commune with his employees.

The campaign was otherwise free of unfair labor practices, but the Employer was clearly putting on a full court press in its campaign. In these circumstances, the executive's question assumes a greater importance. The question is sensitive, since it in effect asks the employee if his Union values are so strong that he would quit if the shop decertified. This statement was coupled with some voiced dissatisfaction from the Operations Director about that blind-siding lawsuit. Rembert's peeve would hardly be lost on a driver isolated in his truck for 10–12 hours with that highest executive, when the driver himself was "part" of the suit. The issue is not what Rembert intended, but what an employee under the circumstances would be likely to feel, that he was being chastised for the suit.

Applying *Rossmore House Hotel*, 269 NLRB 1176 (1984), under all of the circumstances, I find this question coercive. It was from the highest manager, in stressful circumstances, about

a very sensitive topic—the driver's continued employment. Intentionally or not, it tended to create the impression in an employee that the Employer was trying to figure out just how deep the driver's union tendencies went. Therefore, I also sustain this objection.

Conclusion

I hereby sustain the two objections (Objections 2 and 3) found to have merit by the hearing officer, and set aside the election. This conduct took place in a very close election. If only two votes were swayed by this conduct, there would have been a different result. The coercive question and the ride-along campaign call into serious question whether the election outcome truly represents the wishes of the Unit.

I have reviewed the hearing officer's report and the entire record in this matter. There were no exceptions to the hearing officer's report except as noted above. Accordingly I hereby affirm the hearing officer's rulings as to all other objections.

ORDER

IT IS HEREBY ORDERED that inasmuch as I have above sustained Petitioner's Objections No. 2 and 3, the election conducted on January 17, 2002, in this matter is hereby set aside and a second election shall be conducted.